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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,982	02/09/2004	Kurt J. Fredrickson	KF-2004-01	9597
7590	04/19/2006		EXAMINER	
Mark D. Kelly 5401 N. Shoreland Ave. Whitefish Bay, WI 53217-5132			MANAF, ABDUL	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/774,982

Applicant(s)

FREDRICKSON, KURT J.

Examiner

Abdul Manaf

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species: Angularly Adjustable Post Mount configurations illustrated in Figures 1 – 7. The species are independent or distinct because Figures 1 – 5 and 7 comprise a different design than the Figure 6.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 3 – 6, 14, 19, 23 and 24 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.
MPEP § 809.02(a).

During a telephone conversation with Mark Kelly on April 4, 2006 a provisional election was made without traverse to prosecute the invention of Angularly Adjustable

Post Mount. Affirmation of this election must be made by applicant in replying to this Office action.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

In regard to claim 1, Stationary Portion (105) illustrated in Figures 5A-C is unclear. It appears that stationary portion is the same element as the anchor footing portion. A clarification/ correction required.

In regard to claim 23, "attitude" is unclear. A clarification/ correction required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 9, 14, 19, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by the U.S. Patent No. 5,921,695 to Warner.

In regard to claim 1, Warner discloses a mounting apparatus (Fig. 4) for a post 11 comprising a stationary portion 19 having an attachment rod 34 secured to a substructure 5 and extending from the substructure in a direction defining a first axis A; a post base 14 positioned above the stationary portion comprising a post mounting surface and a curved downwardly facing bottom surface (see Fig. 4) having a slotted

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aperture 32; a lower bearing 29 positioned beneath the post base, the lower bearing comprising a curved upwardly facing surface substantially corresponding in curvature to the curved downwardly facing bottom surface of the post base and in slid-able engagement therewith and providing a central aperture 32 through which the attachment rod extends; and means 34 to releasably secure the post base to the stationary portion; wherein the post base may be rotated about the first axis, angularly aligned and secured. Claim examined as best understood.

In regard to claims 2, 3 and 4, Warner discloses a mounting apparatus wherein the curved downwardly facing bottom surface is concave and curved upwardly facing surface is convex (see Fig. 4); and the both spherical surfaces comprise substantially equivalent radiuses of curvature (see Fig. 4).

In regard to claims 5 and 6, Warner discloses a mounting apparatus wherein a post base 14 comprises a round exterior sidewall (see Fig. 4) to engage an inside wall of a post 11 to be mounted, wherein the post base comprises a horizontal cross section dimensioned to engage an inside wall of a round tubular post (see Fig. 4).

In regard to claims 7, 8 and 9, Warner discloses a mounting apparatus wherein the means to releasably secure the post base to the stationary portion comprises a fastener 19 that engages the attachment threaded rod 34 secured to a substructure secured to an anchor or footing 5.

In regard to claim 14, Warner discloses a mounting apparatus (Fig. 4) for a post 11 comprising a mounting surface secured to a substructure 5 and a threaded bolt 34 secured to the substructure and protruding from the mounting surface in a direction

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defining a first axis A (see Fig. 4); a substantially disc shaped lower bearing 29 positioned above the mounting surface, the disc shaped lower bearing comprising a bottom surface, a smoothly curved top surface (see Fig. 4) and an aperture 32 extending through the center of the disk to admit the threaded bolt 34; a substantially cup shaped post base 14 positioned above the lower bearing 29, wherein the post base comprising an exterior cylindrical side wall dimensioned to engage an inner sidewall of a tubular post, and an exterior bottom surface comprising a curved surface adapted to slidably engage the top surface of the lower bearing and having an elongate slot extending there through to admit the threaded bolt (see Fig. 4); and a fastener 19 that engages the bolt to releasably secure the mount in position (see Figs. 3, 4); wherein a mounted post may be angularly offset from the first axis A in a desired direction by translating the bolt in the elongate aperture and rotating the post about the first axis.

In regard to claim 19, Warner discloses a mounting apparatus (Fig. 4) for a post 11 comprising attachment means 34 secured to a substructure 5, the attachment means extending from the substructure in a direction defining a first axis A; and post mounting means 14 comprising one or more surfaces to which a tubular post may be attached and a semispherical joint pivotable about the first axis and angularly offsetable therefrom within a predetermined range; and means for releasably securing the post mounting means to the attachment means 34.

In regard to claim 20, Warner discloses a mounting apparatus for a post wherein the surface (12) to which the post 11 may be attached comprises an outwardly facing cylindrical wall (see Fig. 4).

In regard to claim 23, Warner discloses a method for mounting apparatus (Fig. 4) for a post 11 comprising an attachment rod 34 secured to a substructure 5 and extending from the substructure in a direction defining a first axis A (see Fig. 4); mounting a bearing 29 to the substructure, the bearing having an upwardly facing semispherical curved surface concentric about the first axis and an axial hole 32 to admit the attachment rod (see Figs. 3 and 4); mounting a post to a post base 14, the post base comprising a downwardly facing semispherical surface corresponding in curvature to the upwardly facing curved surface (see Fig. 4) of the bearing, and comprising a slot aperture 32 there through the slot extending from the center in a radially outward direction; mounting the post base over the bearing by passing the attachment rod through the slot aperture of the post base, angularly adjusting (abstract) the post and post base by pivoting the post base about the first axis and positioning the attachment rod in the slot aperture to offset the center of the post base from the first axis until the post is vertical; and securing the post in position by engaging a fastener 19 to the attachment rod and tightening the fastener until the post is locked in position.

In regard to claim 24, Warner discloses an adjustable (abstract) post mounting apparatus (Fig. 4) comprising a stationary portion 19 that provides an attachment rod 34 secured to a substructure 5 and which extends therefrom in a direction defining a first axis A, an adjustable post base 14 that rests on the stationary portion, the post base comprising a semi-spherically curved bottom bearing surface (see Fig. 4) having a slotted aperture 32 there through, to receive the attachment rod; a spacer 29 interposed between the post base and the stationary portion, comprising a semispherical curved

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surface (see Fig. 4) corresponding to the bottom surface of the post base and a center aperture 32 through which the attachment rod extends, semispherical curved surface in engagement with the bottom surface of the post base and forming joint to enable angular adjustment (abstract) of the post base with respect to the first axis to offset a vertical misalignment in the stationary portion within a predetermined range; a fastener 19 securable to the attachment rod wherein the adjustable post mount can be releasably locked into position and can be readjusted.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 10 – 13, 15 – 18, 21, 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the U.S. Patent No. 5,921,695 to Warner.

In regard to claim 10, while Warner discloses a mounting apparatus comprising an anchor 5 in which the attachment rod 34 has been embedded, he does not disclose an anchor comprising concrete. It would have been a matter of design choice to one of ordinary skill in the art to have an anchor comprising concrete (in which the attachment rod has been embedded) for a heavier post in order to have more compression strength (which is concrete's material property).

In regard to claim 11, while Warner discloses a mounting apparatus comprising a post base 14 and a lower bearing 29, he does not specify the material for the post base and lower bearing comprising gray iron. It would have been a matter of design choice to one of ordinary skill in the art to have post base and lower bearing comprising gray iron for its higher tensile and hardness in order to maintain a homogenous bearing surface (in this particular case) for an easier rotation when needed.

In regard to claims 12, 13, 17, 18, 21, 22 and 25, while Warner discloses a mounting apparatus comprising a post base releasably secured by using an attachment rod 34, he does not disclose a post base specifically configured to break away from the attachment rod in response to the force of a direct vehicle impact to the post base. However, a post base releasably secured by an attachment rod is inherently breakable at the joint formed between the attachment rod and a post base (see Fig. 2).

In regard to claims 15 and 16, Warner discloses a mounting apparatus wherein a lower bearing 29 is concave and a post base (see Fig. 4) is convex; and the both spherical surfaces comprise substantially equivalent radiuses of curvature (see Fig. 4). Warner does not disclose a lower bearing being convex and a post base being concave.

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It would have been a matter of design choice to one of ordinary skill in the art to have a lower bearing being convex and a post base being concave for having more interior area or room inside the lower bearing in order to have a thicker bolt passing through the lower bearing area for more strength, while the functionality of the mounting apparatus (rotation in this particular case) does not get affected by switching the bearings' surfaces convexity to concavity and vice versa.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abdul Manaf whose telephone number is 571-272-1476. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AM A.M.

04/11/2006

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N. Slack
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